

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHANNON CARTER,

Plaintiff

Case No. 2:18-cv-00351-JCM-CWH

SCREENING ORDER

v.

NEVADA DEPARTMENT OF
CORRECTIONS et al.,

Defendants

Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis* and a motion requesting screening. (ECF Nos. 1, 1-1, 3). The matter of the filing fee shall be temporarily deferred. The court now screens plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

In addition to the screening requirements under § 1915A, pursuant to the Prison Litigation Reform Act (PLRA), a federal court must dismiss a prisoner’s claim, if “the allegation of poverty is untrue,” or if the action “is frivolous or malicious, fails to state a

1 claim on which relief may be granted, or seeks monetary relief against a defendant who
2 is immune from such relief.” 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure
3 to state a claim upon which relief can be granted is provided for in Federal Rule of Civil
4 Procedure 12(b)(6), and the court applies the same standard under § 1915 when
5 reviewing the adequacy of a complaint or an amended complaint. When a court
6 dismisses a complaint under § 1915(e), the plaintiff should be given leave to amend the
7 complaint with directions as to curing its deficiencies, unless it is clear from the face of
8 the complaint that the deficiencies could not be cured by amendment. See *Cato v. United*
9 *States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

10 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See
11 *Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure
12 to state a claim is proper only if it is clear that the plaintiff cannot prove any set of facts in
13 support of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d
14 756, 759 (9th Cir. 1999). In making this determination, the court takes as true all
15 allegations of material fact stated in the complaint, and the court construes them in the
16 light most favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th
17 Cir. 1996). Allegations of a *pro se* complainant are held to less stringent standards than
18 formal pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While
19 the standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff
20 must provide more than mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*,
21 550 U.S. 544, 555 (2007). A formulaic recitation of the elements of a cause of action is
22 insufficient. *Id.*

23 Additionally, a reviewing court should “begin by identifying pleadings [allegations]
24 that, because they are no more than mere conclusions, are not entitled to the assumption
25 of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can
26 provide the framework of a complaint, they must be supported with factual allegations.”
27 *Id.* “When there are well-pleaded factual allegations, a court should assume their veracity
28 and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

1 “Determining whether a complaint states a plausible claim for relief . . . [is] a context-
 2 specific task that requires the reviewing court to draw on its judicial experience and
 3 common sense.” *Id.*

4 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed
 5 *sua sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This
 6 includes claims based on legal conclusions that are untenable (e.g., claims against
 7 defendants who are immune from suit or claims of infringement of a legal interest which
 8 clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
 9 fantastic or delusional scenarios). *See Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989);
 10 *see also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991).

11 **II. SCREENING OF COMPLAINT¹**

12 In the complaint, plaintiff sues multiple defendants for events that took place while
 13 plaintiff was incarcerated at High Desert State Prison (“HDSP”). (ECF No. 1-1 at 1).
 14 Plaintiff sues defendants NDOC², James Dzurenda (NDOC director), Romeo Aranas
 15 (medical director), M. Cervas (medical grievance responder), Bob Faulkner, and Tonya
 16 P. (nurse). (*Id.* at 1-3). Plaintiff alleges one count and seeks monetary damages and
 17 injunctive relief ordering the NDOC to hire more optometrists to serve the 3,000 plus
 18 inmates at HDSP. (*Id.* at 4, 9).

19 The complaint alleges the following: in March 2016, plaintiff informed HDSP
 20 medical staff that he was in need of an eye doctor. (*Id.* at 4). Plaintiff filed multiple medical
 21 kites but received no response. (*Id.*) Plaintiff filed another grievance and informed
 22 medical of his severe and painful migraines; loss of vision; inability to read letters from
 23 friends and family; and inability to do everyday activities. (*Id.*) Faulkner, Cervas, and
 24

25
 26 ¹ In light of this screening order, the court denies the motion requesting screening
 (ECF No. 3) as moot.

27 ² The court dismisses defendant NDOC, with prejudice, from this case as
 28 amendment would be futile. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989)
 (holding that the NDOC, a state agency, is immune from suit under the Eleventh
 Amendment).

1 Aranas responded to plaintiff's grievances stating that they knew "about the issue with
2 the eye doctor and [that they were] trying to get him to see more inmates and that [plaintiff]
3 was #133 on the list." (*Id.*) This was six months after plaintiff informed medical that he
4 needed to see a doctor. (*Id.*)

5 Plaintiff finally saw a doctor after ten months. (*Id.*) That doctor prescribed plaintiff
6 eye medication. (*Id.*) However, HDSP medical staff withheld the medication for months
7 causing plaintiff to suffer from migraine headaches and dry eyes, as well as preventing
8 plaintiff from engaging in everyday activities. (*Id.*) Tonya P. was responsible for
9 withholding plaintiff's eye medication for months even though she knew plaintiff needed
10 it. (*Id.* at 5). HDSP procedures and policies require inmates to wait an average of 10 to
11 12 months for an eye examination and/or prescription eye medication even after being
12 informed of severe pain, dry eyes, decreases in vision, and painful migraines. (*Id.*)
13 Plaintiff alleges a claim for Eighth Amendment deliberate indifference to serious medical
14 needs. (*Id.* at 4).

15 The Eighth Amendment prohibits the imposition of cruel and unusual punishment
16 and "embodies 'broad and idealistic concepts of dignity, civilized standards, humanity,
17 and decency.'" *Estelle v. Gamble*, 429 U.S. 97, 102 (1976). A prison official violates the
18 Eighth Amendment when he acts with "deliberate indifference" to the serious medical
19 needs of an inmate. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). "To establish an
20 Eighth Amendment violation, a plaintiff must satisfy both an objective standard—that the
21 deprivation was serious enough to constitute cruel and unusual punishment—and a
22 subjective standard—deliberate indifference." *Snow v. McDaniel*, 681 F.3d 978, 985 (9th
23 Cir. 2012).

24 To establish the first prong, "the plaintiff must show a serious medical need by
25 demonstrating that failure to treat a prisoner's condition could result in further significant
26 injury or the unnecessary and wanton infliction of pain." *Jett v. Penner*, 439 F.3d 1091,
27 1096 (9th Cir. 2006) (internal quotations omitted). To satisfy the deliberate indifference
28 prong, a plaintiff must show "(a) a purposeful act or failure to respond to a prisoner's pain

1 or possible medical need and (b) harm caused by the indifference.” *Id.* “Indifference may
2 appear when prison officials deny, delay or intentionally interfere with medical treatment,
3 or it may be shown by the way in which prison physicians provide medical care.” *Id.*
4 (internal quotations omitted). When a prisoner alleges that delay of medical treatment
5 evinces deliberate indifference, the prisoner must show that the delay led to further injury.
6 *See Shapley v. Nevada Bd. of State Prison Comm’rs*, 766 F.2d 404, 407 (9th Cir. 1985)
7 (holding that “mere delay of surgery, without more, is insufficient to state a claim of
8 deliberate medical indifference”).

9 The court finds that plaintiff states a colorable deliberate indifference to serious
10 medical needs claim. Based on the allegations, prison officials were aware for ten months
11 that plaintiff had severe migraines, loss of vision, and the inability to conduct daily
12 activities due to his vision issues but delayed treatment. Additionally, based on the
13 allegations, when plaintiff did receive treatment, Tonya P. withheld plaintiff’s medication
14 from him. The court will permit this claim to proceed on screening against defendants
15 Aranas, Faulkner, Cervas, and Tonya P.

16 Although there are no facts indicating that Dzurenda was personally involved in
17 plaintiff’s medical care, the current director of the NDOC is still a proper defendant for
18 plaintiff’s claim for injunctive relief because he would be responsible for carrying out the
19 injunctive relief. *See Colwell v. Bannister*, 763 F.3d 1060, 1070 (9th Cir. 2014) (holding
20 that “a corrections department secretary and prison warden were proper defendants in a
21 § 1983 case because ‘[a] plaintiff seeking injunctive relief against the [s]tate is not required
22 to allege a named official’s personal involvement in the acts or omissions constituting the
23 alleged constitutional violation. Rather, a plaintiff need only identify the law or policy
24 challenged as a constitutional violation and name the official within the entity who can
25 appropriately respond to injunctive relief.’”). As such, this claim will also proceed against
26 defendant Dzurenda for injunctive relief.

27 **III. CONCLUSION**

28 For the foregoing reasons, it is ordered that a decision on the application to

1 proceed *in forma pauperis* (ECF No. 1) is deferred.

2 It is further ordered that the motion requesting screening (ECF No. 3) is denied as
3 moot.

4 It is further ordered that the clerk of the court file the complaint (ECF No. 1-1) and
5 send plaintiff a courtesy copy.

6 It is further ordered that count I, alleging Eighth Amendment deliberate indifference
7 to serious medical needs, will proceed against defendants Aranas, Faulkner, Cervas, and
8 Tonya P. The portion of this claim alleging injunctive relief will also proceed against
9 defendant Dzurenda.

10 It is further ordered that defendant NDOC is dismissed with prejudice from this
11 case as amendment would be futile.

12 It is further ordered that given the nature of the claim(s) that the court has permitted
13 to proceed, this action is **STAYED** for 90 days to allow plaintiff and defendant(s) an
14 opportunity to settle their dispute before the \$350.00 filing fee is paid, an answer is filed,
15 or the discovery process begins. During this 90-day stay period, no other pleadings or
16 papers shall be filed in this case, and the parties shall not engage in any discovery, nor
17 are the parties required to respond to any paper filed in violation of the stay unless
18 specifically ordered by the court to do so. The court will refer this case to the court's
19 inmate early mediation program, and the court will enter a subsequent order. Regardless,
20 on or before 90 days from the date this order is entered, the office of the attorney general
21 shall file the report form attached to this order regarding the results of the 90-day stay,
22 even if a stipulation for dismissal is entered prior to the end of the 90-day stay. If the
23 parties proceed with this action, the court will then issue an order setting a date for
24 defendants to file an answer or other response. Following the filing of an answer, the
25 court will issue a scheduling order setting discovery and dispositive motion deadlines.

26 It is further ordered that "settlement" may or may not include payment of money
27 damages. It also may or may not include an agreement to resolve plaintiff's issues
28 differently. A compromise agreement is one in which neither party is completely satisfied

1 with the result, but both have given something up and both have obtained something in
2 return.

3 It is further ordered that if the case does not settle, plaintiff will be required to pay
4 the full \$350.00 filing fee. This fee cannot be waived. If plaintiff is allowed to proceed *in*
5 *forma pauperis*, the fee will be paid in installments from his prison trust account. 28
6 U.S.C. § 1915(b). If plaintiff is not allowed to proceed *in forma pauperis*, the \$350.00 will
7 be due immediately.

8 It is further ordered that if any party seeks to have this case excluded from the
9 inmate mediation program, that party shall file a “motion to exclude case from mediation”
10 on or before 21 days from the date of this order. The responding party shall have 7 days
11 to file a response. No reply shall be filed. Thereafter, the court will issue an order, set
12 the matter for hearing, or both.

13 It is further ordered that the clerk of the court shall electronically SERVE a copy of
14 this order and a copy of plaintiff’s complaint (ECF No. 1-1) on the office of the attorney
15 general of the state of Nevada, by adding the attorney general of the state of Nevada to
16 the docket sheet. This does not indicate acceptance of service.

17 It is further ordered that the attorney general’s office shall advise the court within
18 21 days of the date of the entry of this order whether it will enter a limited notice of
19 appearance on behalf of defendants for the purpose of settlement. No defenses or
20 objections, including lack of service, shall be waived as a result of the filing of the limited
21 notice of appearance.

22
23 DATED February 27, 2019.

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25 
26 UNITED STATES DISTRICT JUDGE
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

SHANNON CARTER,

Plaintiff,

v.

NEVADA DEPARTMENT OF
CORRECTIONS et al.,

Defendants.

Case No. 2:18-cv-00351-JCM-CWH
REPORT OF ATTORNEY GENERAL
RE: RESULTS OF 90-DAY STAY

**NOTE: ONLY THE OFFICE OF THE ATTORNEY GENERAL SHALL FILE THIS FORM.
THE INMATE PLAINTIFF SHALL NOT FILE THIS FORM.**

On _____ [*the date of the issuance of the screening order*], the court issued its screening order stating that it had conducted its screening pursuant to 28 U.S.C. § 1915A, and that certain specified claims in this case would proceed. The court ordered the office of the attorney general of the state of Nevada to file a report ninety (90) days after the date of the entry of the court's screening order to indicate the status of the case at the end of the 90-day stay. By filing this form, the office of the attorney general hereby complies.

REPORT FORM

[Identify which of the following two situations (identified in bold type) describes the case, and follow the instructions corresponding to the proper statement.]

Situation One: Mediated Case: The case was assigned to mediation by a court-appointed mediator during the 90-day stay. [If this statement is accurate, check **ONE** of the six statements below and fill in any additional information as required, then proceed to the signature block.]

_____ A mediation session with a court-appointed mediator was held on _____ [*enter date*], and as of this date, the parties have reached a settlement (*even if paperwork to memorialize the settlement remains to be completed*). (*If this box is checked, the parties are on notice that they must SEPARATELY file either a contemporaneous stipulation of dismissal or a motion requesting that the court continue the stay in the case until a specified date upon which they will file a stipulation of dismissal.*)

_____ A mediation session with a court-appointed mediator was held on _____ [*enter date*], and as of this date, the parties have not reached a settlement. The office of the attorney general therefore informs the court of its intent to proceed with this action.

1 _____ No mediation session with a court-appointed mediator was held during the
2 90-day stay, but the parties have nevertheless settled the case. *(If this box*
3 *is checked, the parties are on notice that they must SEPARATELY file a*
4 *contemporaneous stipulation of dismissal or a motion requesting that the*
court continue the stay in this case until a specified date upon which they
will file a stipulation of dismissal.)

5 _____ No mediation session with a court-appointed mediator was held during the
6 90-day stay, but one is currently scheduled for _____ [enter
date].

7 _____ No mediation session with a court-appointed mediator was held during the
8 90-day stay, and as of this date, no date certain has been scheduled for
such a session.

9 _____ None of the above five statements describes the status of this case.
10 Contemporaneously with the filing of this report, the office of the attorney
general of the state of Nevada is filing a separate document detailing the
status of this case.

11 * * * * *

12 **Situation Two: Informal Settlement Discussions Case:** The case was NOT assigned
13 to mediation with a court-appointed mediator during the 90-day stay; rather, the
14 parties were encouraged to engage in informal settlement negotiations. [If this
statement is accurate, check **ONE** of the four statements below and fill in any additional
information as required, then proceed to the signature block.]

15 _____ The parties engaged in settlement discussions and as of this date, the
16 parties have reached a settlement *(even if the paperwork to memorialize*
17 *the settlement remains to be completed)*. *(If this box is checked, the parties*
18 *are on notice that they must SEPARATELY file either a contemporaneous*
stipulation of dismissal or a motion requesting that the court continue the
stay in this case until a specified date upon which they will file a stipulation
of dismissal.)

19 _____ The parties engaged in settlement discussions and as of this date, the
20 parties have not reached a settlement. The office of the attorney general
therefore informs the court of its intent to proceed with this action.

21 _____ The parties have not engaged in settlement discussions and as of this date,
22 the parties have not reached a settlement. The office of the attorney
general therefore informs the court of its intent to proceed with this action.

23 _____ None of the above three statements fully describes the status of this case.
24 Contemporaneously with the filing of this report, the office of the attorney
25 general of the state of Nevada is filing a separate document detailing the
status of this case.

26 Submitted this _____ day of _____, _____ by:

27 Attorney Name: _____

28 Print

Signature

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